

CARPENTER et al  
Appl. No. 10/764,473  
July 12, 2007

**AMENDMENTS TO THE DRAWINGS**

Please substitute the attached drawing sheet 1/3 as a substitute sheet for the originally  
filed sheet 1/3.

**REMARKS/ARGUMENTS**

Claims 1-40 stand rejected in the outstanding Official Action. Claims 1, 2, 5, 12, 13, 27 and 28 have been amended and therefore claims 1-40 remain in this application.

The Examiner's acknowledgment of Applicants' claim for foreign priority and receipt of the certified copy of the priority document is very much appreciated. Similarly, the Examiner's consideration of the prior art listed in Applicants' previously submitted Information Disclosure Statement is appreciated.

Claims 1-40 stand rejected under 35 USC §101 as being directed to non-statutory subject matter. The Patent Office's contention that the claims are directed to a "program per se" is respectfully traversed. Independent claim 1 specifies a method of filtering data, claim 12 specifies a computer program product for applying filter coefficients to data items and claim 27 specifies a data processing apparatus. All of these are believed to fall within §101's specification of "any new and useful process . . ." or "any new and useful . . . machine . . ." Accordingly, the allegation that the originally submitted claims define non-statutory subject matter is respectfully traversed.

However, notwithstanding the above traversal, Applicants have amended independent claims 1, 12 and 27 to include a recitation of a computer readable storage medium which is believed to place the three independent claims in condition for allowance even in view of the Patent Office's position on statutory subject matter. Accordingly, any further rejection of claims 1-40 under 35 USC §101 is respectfully traversed.

Claims 2, 5, 13 and 28 stand rejected under 35 USC §112 (second paragraph) as being indefinite. Applicants have revised the language of claim 1 to clearly specify "said sequence of

averaging calculations” which provides literal antecedent for “said sequence of averaging calculations” in claims 2 and 5. Claim 12 specifies controlling the processor to perform “a sequence of averaging calculations” and then recites two steps. Claim 13, dependent on claim 12, indicates that the sequence of averaging calculations comprises two more limited steps. The use of the word “comprises” is an open-ended inclusive word meaning the sequence must include the specified two steps of claim 13 and may contain other steps. Additionally, the dependency of claim 13 on claim 12 means that the steps of claim 12 could be limited in the manner of the two steps in claim 13 or they could be in addition to the steps of claim 13. Either interpretation is correct and is encompassed under proper claim interpretation. Accordingly, claim 13 is believed to positively and distinctly claim the subject matter recited.

Similarly, claim 28 is dependent on claim 27 which positively recites “a sequence of averaging calculations” and claim 28 specifies that the sequence comprises the recited more limited two steps. Again, the use of the word “comprises” is inclusive of the recited two steps and may include other steps. As noted in claims 12 and 13 and 27 and 28, the two averaging steps of the dependent claims are somewhat narrower than the two averaging steps specified in parent claim, but in both instances the two averaging steps comprises the sequence of averaging calculations.

As noted in the *Ex parte Porter* decision of the Board of Patent Appeals and Interferences (25 USPQ2d 1144, 1147 (BOPAI 1992)), a claim such as claims 13 and 28 which “incorporates by reference all of the subject matter of another claim, that is, the claim is not broader in any respect, to be in compliance with the 4<sup>th</sup> paragraph of 35 USC §112.” The fact that claims 13 and 28 further limit the claims from which they depend and specify the further limits in the two

recited averaging steps is believed to be clearly definite and in view of the amendments made, any further rejection under 35 USC §112 of claims 2, 5, 13 and 28 is respectfully traversed.

On page 3, section 3 of the Official Action, the Examiner objects to the last line of the Abstract and this line has been deleted in the above amendment, thereby obviating any further objection.

In section 4 on page 3, the Examiner correctly notes that Figure 1 of the drawings should be labeled "Prior Art" and a substitute sheet of drawings has been submitted making this correction.

**Telephone Interview July 11, 2007**

Examiner Malzahn and the undersigned conducted a short telephone interview on July 11, 2007 in order to discuss amendments to claims 1, 12 and 27. The language "computer readable storage medium" was included in each of these claims in order to reflect the Patent Office view that structure must be positively recited, even in the case of method claims, in order to meet the statutory claim requirements.

Examiner Malzahn and the undersigned agreed that, while it could be argued that "computer readable storage medium" is not literally disclosed in the application as originally filed, it was inherently included in the specification as filed and would be clearly obvious to those of ordinary skill in the art. The Examiner's assistance with arriving at agreed-to claim language (obviously pending any final prior art search) is very much appreciated.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that pending claims 1-40 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone

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or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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